IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24225 of 2004

Between:

1 K.B. Sunil, (minor)S/o. K. Sreenivasulu,aged about 16 years,
Rep. by Guardian Father K. Sreenivasulu,
S/o. K. Venkatesulu,
R/O Near Neelam Talkies, Anantapur, Anantapur District.
2 K.B. Sai Sanketh,(minor) S/o. K. Sreenivasulu,aged about 12 years Rep. by Guardian Father K. Sreenivasulu,
S/o. K. Venkatesulu,
R/O Near Neelam Talkies, Anantapur, Anantapur District.

.....PETITIONERS

AND

1 The Ananthapur District Cooperative Central Bank Limited,
Rep. by its Branch Manager, Anantapur, Anantapur District.
2 The Sale Officer, Anantapur District Cooperative Central Bank Limited,
Anantapur, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate Writ or order declaring the action of the respondents in conducting the sale on 15-12-2004 in respectof D.No. 181/145, Ward No.5, New Present 6 D.No. 145, Anantapur Municipal Limits by not considering the petitioners (Minors) petition dt. 07-12-04 as arbitrary, illegal and void and consequently set aside the same..

Counsel for the Petitioners:MR,K.MAHESWARA RAO

Counsel for the Respondent Nos.1 and 2: MR.O.MANOHER REDDY (SC FOR CO.OP CENTRAL BANK, Anantapur)

The Court at the admission stage made the following :

ORDER:

The petitioners challenge the action of the respondents in conducting the sale in respect of premises bearing D.No.181/145, Ward No.5, Anantapur Town.

The petitioners are minors represented by their father K.Sreenivasulu. In the affidavit filed in support of the writ petition, it is stated that the property referred to above was bequeathed by their maternal grand father Sri N.A.Narayana through a will, dated 11.03.1998. It is represented that though their mother Smt Tulasi does not have any right or interest in this property, she mortgaged the same in favour of the 2nd respondent and despite the objections raised on behalf of the petitioners, the sale was proceeded with on 15.12.2004. They contend that the mortgage as well as the sale is unlawful and not binding upon the petitioners.

On behalf of the respondents, a counter affidavit is filed. It is alleged that the deponent of the affidavit as well as his wife Smt Tulasi have jointly executed the mortgage deed in favour of the 2nd respondent and when they committed default, the premises are being sold. It is also alleged that the plea of that property was bequeathed in favour of minors was invented, with a view to defeat the claim of the respondents.

Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

It is not in dispute that the property in question was mortgaged by none other than the mother of the petitioners. The father of the petitioners has also associated himself with the execution of the mortgage deed. Therefore, it is difficult to accept the plea advanced on behalf of the petitioners. It is true that the respondents cannot proceed against the property, if the mortgagors thereof do not have any title.

Inasmuch as the interest of the minors is involved, at one stage, this Court indicated that the parents of the petitioners may have to either pay the amount or provide an alternative security for the same transaction, if they are interested in protecting the interest of the minors. On instructions, learned counsel for the petitioner submits that the parents of the petitioners are prepared to pay the sale amount of Rs.2,73,665/-,

within a period of one month and in such an event, the property be released from mortgage.

Taking the totality of the circumstances into account, the writ petition is disposed of, directing that it shall be open to the petitioners or their parents to pay the sale amount of Rs.2,73,665/- on or before 10.03.2005. Till then, the sale of the premises conducted on 15.12.2005 shall not be confirmed. If the said amount is paid within that time, the sale shall stand set aside and the property be restored to the petitioners. On the other hand, if the said amount is not paid within the stipulated time, it shall be open to the respondents to confirm the sale and take necessary steps. There shall be no order as to costs.

07.02.2005

Note:

Issue C.C. in three days.

(B/o)

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To

1 The Branch Manager, Ananthapur District Cooperative Central Bank Limited, Anantapur, Anantapur District.
2 The Sale Officer, Anantapur District Cooperative Central Bank Limited, Anantapur, Anantapur District.

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